

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Permit 20680 (Application 29871)
James and Diane Clifton

**ORDER APPROVING EXTENSION OF TIME
AND AMENDING THE PERMIT**

SOURCE: Unnamed Stream tributary to Burton Creek
COUNTY: Napa

WHEREAS:

1. Permit 20680 was issued to James and Diane Clifton on August 19, 1993, pursuant to Application 29871.
2. A petition for an extension of time within which to develop the project and apply the water to the proposed use was filed with the State Water Resources Control Board (SWRCB) on September 30, 1998.
3. The permittee has proceeded with diligence and good cause has been shown for an extension of time. Public notice of the request for an extension of time was issued on March 16, 2001. Protestant Solano County Water Agency requested that the terms from State Water Resources Control Board Order 96-002 be included in the permit to resolve its concerns, if the permit does not include the terms. The permit already includes the terms. On October 9, 1997, the Division of Water Rights issued an Order Amending Permit 20680 by Addition of Terms and Conditions to Conform with Order WR 96-002. Accordingly, no further action is needed to resolve the protest.
4. The SWRCB has determined that the petition for an extension of time does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
5. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition should be placed in the permit making the permittee aware of possible obligations resulting from these acts.
6. There is the possibility that buried archeological deposits may be present and accidental discovery could occur. In compliance with the California Environmental Quality Act, which states that a Lead Agency is required to make a provision for historical or unique archeological resources accidentally discovered during construction or operation of projects, a condition should be included in the permit requiring notification of the Chief of the Division of Water Rights if project activities uncover any buried archeological materials.

NOW, THEREFORE, IT IS ORDERED THAT PERMIT 20680 IS AMENDED TO READ AS FOLLOWS:

1. Condition seven of the permit be amended to read:

Complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2002.

(0000009)

2. Permit 20680 is amended to include the following Endangered Species condition:

This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

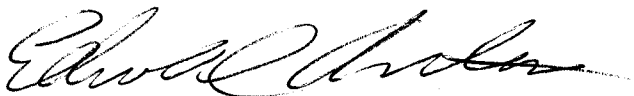
3. Permit 20680 is amended to include the following archeological condition:

Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; old trails; and structure and feature remains such as building foundations and dumps. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the applicant to evaluate the find and recommend appropriate mitigation. Project related activities in the area of the find shall resume only after the completion of the recommended mitigation, as approved by the Chief of the Division of Water Rights.

(0000215)

4. All other conditions of Permit 20680 and the October 9, 1997 Order Amending Permit by Addition of Terms and Conditions to Conform with Order WR 96-002 are still applicable.

STATE WATER RESOURCES CONTROL BOARD



*Edward C. Anton, Chief
Division of Water Rights*

Dated: **APR 8 2002**

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
ORDER

Application 29871 Permit 20680 License

**ORDER AMENDING PERMIT
BY ADDITION OF TERMS AND CONDITIONS
TO CONFORM WITH ORDER WR 96-002**

WHEREAS:

1. Permit 20680 was issued to James & Diane Clifton on August 19, 1993 pursuant to Application 29871.
2. Permittee is a signatory to the March 10, 1995 Condition 12 Settlement Agreement (Agreement) between U.S. Bureau of Reclamation, Solano County Water Agency, and nearly all post-1945 appropriative water right holders in the Putah Creek watershed above Monticello Dam.
3. Order WR 96-002 (Order) was adopted by the State Water Resources Control Board (SWRCB) on February 27, 1996.
4. Both the Agreement and the Order subject the permit to specific conditions.

NOW, THEREFORE, IT IS ORDERED THAT:

The following conditions be added to the permit:

Permittee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

- (1) Permittee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this permit for noncompliance with the terms of the Agreement.
- (2) Diversion of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The permittee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.
- (3) Within one year of the construction of the reservoirs covered by this permit, permittee shall have the capacity of each reservoir surveyed by a registered civil engineer or licensed surveyor. A copy of these surveys and area-capacity curves shall be provided to the watermaster and the SWRCB.

STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20680

Application 29871 of James Clifton and Diane Clifton

P.O. Box 128, Pope Valley, CA 94567

filed on December 3, 1990, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

<u>Unnamed Stream</u>	<u>Burton Creek thence</u>
<u></u>	<u>Maxwell Creek thence</u>
<u></u>	<u>Pope Creek thence</u>
<u></u>	<u>Lake Berryessa thence</u>
<u></u>	<u>Putah Creek thence</u>
<u></u>	<u>Yolo Bypass</u>

2. Location of point of diversion:

	40-acre subdivision of public land survey or projection thereof	Section *	Town- ship	Range	Base and Meridian
BY CALIFORNIA COORDINATE SYSTEM, ZONE 2 RESERVOIR #1 NORTH 351,150 FEET AND EAST 1,878,050 FEET	NW $\frac{1}{4}$ OF SW $\frac{1}{4}$	16	9N	5W	MD
RESERVOIR #2 NORTH 350,650 FEET AND EAST 1,877,550 FEET	SW $\frac{1}{4}$ OF SW $\frac{1}{4}$	16	9N	5W	MD

County of Napa

* Projected

3. Purpose of use:	4. Place of use:	Section *	Town- ship	Range	Base and Meridian	Acre
STOCKWATERING	RESERVOIRS #1 AND #2 IN NW $\frac{1}{4}$ OF SW $\frac{1}{4}$	16	9N	5W	MD	
DOMESTIC						
IRRIGATION	NW $\frac{1}{4}$ OF SW $\frac{1}{4}$	16	9N	5W	MD	15
	NE $\frac{1}{4}$ OF SW $\frac{1}{4}$	16	9N	5W	MD	10
	SE $\frac{1}{4}$ OF SW $\frac{1}{4}$	16	9N	5W	MD	5
	SW $\frac{1}{4}$ OF SW $\frac{1}{4}$	16	9N	5W	MD	10
					TOTAL	40

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 20 acre-feet per annum to be collected from November 1 of each year to May 31 of the succeeding year as follows: 5 acre-feet per annum in Reservoir #1, and 15 acre-feet per annum in Reservoir #2.

(0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

(000005I)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

7. Complete application of the water to the authorized use shall be made by December 31, 1997.

(0000009)

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued.

(0000010)

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

10. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

12. Permittee shall install and maintain an outlet pipe of adequate capacity in each dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoirs which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipes or alternative facilities to the Chief of the Division of Water Rights for approval. Before storing water in the reservoirs, permittee shall furnish evidence which substantiates that the outlet pipes or alternative facilities have been installed in each dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043)

13. Permittee shall install and properly maintain in each reservoir a staff gage, satisfactory to the State Water Resources Control Board, for the purpose of determining water levels in the reservoirs.

Permittee shall record the staff gage readings on or about November 1 of each year. Such readings shall be supplied to the State Water Resources Control Board with the next progress report submitted to the Board by permittee. (0070047)
(0100047)

14. Permittee is hereby put on notice that there may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in State Water Resources Control Board Decision 869. During such years, unless replacement water is provided on an exchange basis, permittee shall release water collected to storage under this permit during the preceding collection season at the maximum practical rate to flow into Lake Berryessa. (0220087)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

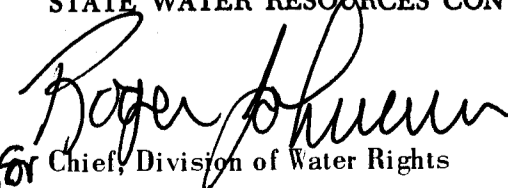
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: AUGUST 19 1993

STATE WATER RESOURCES CONTROL BOARD


for Chief, Division of Water Rights